Before the Federal Communications Commission Washington, D.C. 20554

MM Docket No. 92-2

In re Applications of

DRY PRONG EDUCATIONAL BROADCASTING FOUNDATION (hereafter "Dry Prong Educational") File No. BPED-900305MF

For Modification of Noncommercial Station KVDP(FM), Dry Prong, Louisiana

MISSIONARY ACTION File No. BPED-900905MK PROJECTS (hereafter "Missionary Action")

For Construction Permit for a New Noncommercial FM Station on Channel 210 in Alexandria, Louisiana

HEARING DESIGNATION ORDER

Adopted: January 6, 1992; Released: January 21, 1992

By the Chief, Audio Services Division:

- 1. The Commission has before it the above-captioned mutually exclusive applications. One application is to modify the facilities of Station KVDP(FM), Dry Prong, Louisiana, and the other is for a new noncommercial FM Station in Alexandria, Louisiana.
- 2. On November 19, 1990, Alexandria Broadcasting Company, licensee of KALB(AM) and KZMZ(FM). Alexandria ("KZMZ"), filed a petition to deny the application of Missionary Action. Essentially, the petition charges that (1) Missionary Action has not demonstrated the necessary qualifications to be a noncommercial educational FM licensee; (2) the ownership interest of one of Missionary Action's three principals in the licensee of commercial station KWDF(AM), Ball. Louisiana, raises questions as to whether Missionary Action's proposed station will serve the commercial interests of Station KWDF; and (3) Missionary Action is not accredited and although not dispositive, when taken with the facts presented in the petition, Missionary Action should be disqualified.

- 3. Missionary Action's opposition, filed on December 21, 1990, challenges KZMZ's standing to file its petition arguing that there will be no competition between the two stations since Missionary Action proposes noncommercial service only. Missionary Action states that KZMZ's petition does not contain specific allegations of fact to show that a grant of Missionary Action's application would be prima facie inconsistent with the public interest and the allegations are not supported by any affidavits of persons with personal knowledge. In response to the allegations, Missionary Action contends that it is an established nonprofit corporation, and that its application indicates educational goals and proposes an educational program. Missionary Action points out that its application also discloses the 20% partnership interest which William D. Franks, president of Missionary Action, has in Station KWDF. In a signed declaration (Exhibit 1 of opposition), Mr. Franks asserts that there will be no impermissible cross promotion between the stations.
- 4. In light of the action taken herein, the petition to deny will be granted to the extent indicated and denied in all other respects. As to the issue of standing, KZMZ has alleged that a grant of Missionary Action's application will cause economic injury by creating an additional competitor in its market. Since the question of standing does not depend upon the merits of the petitioner's contentions, assuming that the alleged facts set forth are true, KZMZ has established standing as a party in interest under 47 U.S.C. § 309(d). See FCC v. Sanders Brother Radio Station, 309 U.S. 470 (1940); Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application, 82 FCC 2d 89, 94 (1980).
- 5. Eligibility. Section 73.503(a) of the Commission's Rules. 47 C.F.R. § 73.503(a), mandates that a noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization upon a showing that the station will be used in the advancement of an educational program. Missionary Action states that as an educational purpose it "will seek to develop relationships with schools, educational institutions and other traditionally, educationally oriented charitable and public service organizations," and that it "will utilize the facilities of the station to support the educational programs of the community" by broadcasting particular programming and by using the station for training students in the area of broadcasting (Exhibit 1 of application). We find the material submitted in the application insufficient to make a determination that Missionary Action has an acceptable educational purpose in compliance with 47 C.F.R. § 73.503. Further, in a declaration attached to its opposition, Mr. Franks states that Missionary Action has "as its desire and objective to provide and distribute programs and to train people in the field of broadcasting," and that Missionary Action "will, through this broadcast medium, seek to help resolve community problems and issues." This showing still falls short of an acceptable educational purpose. Proposing to train people in the field of broadcasting is insufficient to make a determination that an applicant has an acceptable educational purpose. Way of the Cross of Utah, Inc., 58 RR 2d 455, 460 n. 10 (1985). Accordingly, an appropriate issue will be specified.

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¹ On January 8, 1991, KZMZ filed a reply to the opposition which essentially restates its arguments from the original peti-

- 6. KZMZ's allegation regarding Missionary Action's recommercial Station KWDF with unsupported. Missionary Action's application states that it is a nonprofit corporation and that Mr. Franks has a 20% partnership interest in Station KWDF. Mr. Franks subsequently declared that there will be no cross promotion between the stations. Finding no further evidence to support KZMZ's claim, we deny this portion of the petition. For the same reason, we reject KZMZ's argument that since Missionary Action is not an accredited educational organization, it should not be awarded a construction permit. Section 73.503(a) does not require that an educational applicant be accredited by a state, regional, or national authority. Accreditation is merely one of the factors to be considered in determining the eligibility of an educational organization. See 47 C.F.R. § 73.503(a)(1); Lower Cape Communications, Inc., 47 RR 2d 1577, 1578 (1980).
- 7. Environmental. Dry Prong Educational proposes to locate its transmitting antenna on a new tower and Missionary Action proposes an existing tower. Our engineering study indicates that both applicants have failed to address the matter of how they propose to resolve any RF exposure to workers on their respective towers. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that they may have failed to comply with the environmental criteria set forth in the Report and Order in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). See also, Public Notice entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposal would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. Section 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since Dry Prong Educational and Missionary Action failed to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, each will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally, OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance With FCC-Specified Guidelines For Human Exposure to Radiofrequency Radiation," at 28. Therefore, Dry Prong Educational and Missionary Action will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See Golden State Broadcasting Corp., 71 FCC 2d 229 (1979), recon, denied sub nom. Old Pueblo Broadcasting Corp., 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the applicants' proposals will not have a significant impact upon the quality of the human environment, the contingent environmental

- issue shall be deleted and the presiding judge shall thereafter not consider the environmental effects of the proposals. See 47 C.F.R. § 1.1308(d).
- 8. Share-time Agreement. Dry Prong Educational has stated that attempts to remove the mutual exclusivity have been unsuccessful. However, neither applicant has indicated whether an attempt has been made to negotiate a sharetime arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. Granfalloon Denver Educational Broadcasting, Inc., 43 Fed. Reg. 49560 (October 24, 1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing from participating in negotiations with a view toward establishing a share-time agreement among themselves.
- 9. Section 307(b). The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.
- 10. Areas and Populations. Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in New York University, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.
- 11. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.
- 12. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:
 - 1. To determine whether Missionary Action is qualified to be a noncommercial educational FM licensee.
 - 2. If a final environmental impact statement is issued with respect to Dry Prong Educational and Missionary Action in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposals are consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.
 - 3. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each ap-

plicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

- 4. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.
- 5. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.
- 13. IT IS FURTHER ORDERED. That the petition to deny filed by KZMZ is hereby granted to the extent set forth above.
- 14. IT IS FURTHER ORDERED. That in accordance with paragraph 7 hereinabove, Dry Prong Educational and Missionary Action shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.
- 15. IT IS FURTHER ORDERED. That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be adressed to the named counsel of record, Hearing Branch, Enforcement Division, Mss Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.
- 16. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.
- 17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in

such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief Audio Services Division Mass Media Bureau